

Public Defender News



Chief's Corner

Special points of interest:

- *Budget Update*
- *A Rough Trip Through Paradise*
- *Capital Defense Training*



Now that the Legislature has adjourned, I have enjoyed getting around to offices to see people and talk of the happenings in the session. If I have yet to get to your office, Harry and/or I will be out to see you in the near future.

For a recap of the budget outcome, please refer to Harry Freebourn's section in this newsletter. As to the substantive criminal bills passed, many of them related to DUI. There were several sex offender bills and also several bills relating to DN cases. Eric Olson is in the process of preparing a legislative update which you should have within a few weeks.

SB 187 to reform the public defender system passed and has been signed by the Governor. In its final form, it does very little that we aren't already doing. It does increase the assessments against our clients. Misdemeanors increase from \$150 to \$250 and felonies increase from \$500 to \$800. The language remains that requires the client have the ability to pay and also that we do not recover more than we have expended. Our clients should be advised as to the potential financial consequences although I think it is also appropriate to suggest the likelihood of the actual imposition of costs.

Harry and I and others continually talk of things that could be done better or more efficiently. One suggestion we heard was instead of buying the new Montana Codes, we provide them electronically. I would very much like to know what people think of this idea. Just e-mail me.

I hope everyone is looking forward to the summer and Support Staff Training, Capital Defense Training, and maybe, just SUMMERTIME!!

Randi

Inside this issue:

<i>Budget Update</i>	2
<i>Contractor Corner</i>	2
<i>Chairman Gillespie Reflects on the Session</i>	3
<i>OPD Spotlight</i>	4
<i>Change Management Committee</i>	5
<i>Lawyer of the Year</i>	5
<i>Capital Defense</i>	6
<i>AFSCME Convention</i>	7
<i>Employee Incentive Program</i>	7
<i>Records Management</i>	8

Five Years and Counting

What's exciting in July? The 4th of July of course.....cookouts, parties, swimming, and fireworks. Well, guess what? There's something else exciting about July. We are turning 5 on July 1, 2011!

Yes, it has been almost five years since the statewide system launched to improve public defense services across Montana. Since then, we have worked together to make this the best system possible.

Will we celebrate this accomplishment? How? When? Where? Stay tuned!



Budget Update

By Harry Freebourn

The 62nd session of the Montana Legislature adjourned April 28, following final approval of House Bill 2, the General Appropriations Act, commonly referred to as the budget bill.

How did we fare in this process? The legislature approved funding for the 2013 biennium, comprised of two fiscal years (fiscal 2012 begins July 1, 2011 and ends June 30, 2012 and fiscal 2013 begins July 1, 2012 and ends June 30, 2013). We received funding for both the Public and Appellate Defender Programs in the amount of \$22.5 million for fiscal 2012 and \$22.4 million for fiscal 2013. The \$100,000 difference is due to the fact that we pay for a legislative audit that occurs mostly during the first fiscal year. The funding we received is nearly the same as what we are currently expending to operate this fiscal year.

Compared to what we requested, the dollar amounts are very close to our request, but the 8 FTE we received was significantly under our request for 17 FTE.

We also received \$900,000 for the 2013 biennium to pay for expenditures related to cases that have the possibility of the death penalty. As most of you know, we are currently involved in a death penalty case.

One other note of interest—you may have heard that we needed more funding to make it through the current fiscal year (ending June 30). The legislature approved supplemental funding of \$1.2 million to cover shortfalls in both the Public Defender and Appellate Defender programs, as well as \$150,000 for expenditures related to the death penalty case. We appreciate your help in making this additional funding last until June 30.

Contractor Corner

By Larry Murphy



Everything is going well in the contractor world. I have been conducting Standards Compliance interviews, and if I haven't already seen you, I will see you in the near future to complete this task together.

The majority of contract attorneys are getting really good at closing out cases which is greatly appreciated, but some are still not using the closing codes. Please note that this holds up payment of the claim because it can't be sent through for payment until the cases are closed out. Also remember that if the Regional Office did not give you an OPD number, you need to contact them prior to sending in a claim. Use of the pre-populated claim forms is preferred.

Please remember that conflict claims need to be sent directly to the Central Office. Non-conflict claims must go to the Regional Office first. There has also been an increase in contract attorneys submitting third party costs for reimbursement. These have been and will continue to be denied.

And some good news! Just in case you missed it, the mileage rate increased for 2011 to \$0.51/mile. Please use this rate when calculating your mileage reimbursement.

Have a great summer,

Larry

Reminiscing About a Rough Trip Through Paradise

By Fritz Gillespie, Chair, Montana Public Defender Commission



*“Thank you all for
your continuing
efforts and dedication
at providing effective
assistance of counsel
for those in need.
Hold your heads high
for the good you do.”*

Riding herd over SB187 left some noteworthy impressions. All devoted to ensuring the indigent accused have the effective assistance of counsel in their “defence” should take heed. First, there are people who lowly regard the notion of providing indigents a defense at public expense. Being uninformed about the details and nuances associated with the concept is often the reason. Some left the session with a better understanding of the agency’s mission and the challenges it endures. Make no mistake, however, there are others who are entrenched in the belief that defense at public expense is an unwarranted drain on the public coffers and at most should be nothing more than window dressing. Attempts at turning that dark tide must continue but there will be many instances of time wasted.

We must do a better job of spreading the word about the good things the agency does and what has been done about the AU recommendations. Commissioner Ken Olson deserves gratitude for his piece supporting the agency. Commissioner Terry Jessee also deserves thanks for compiling details about what has been done about the AU recommendations. More opportunities for telling our story will come during the interim. We can build on the contributions of Ken and Terry.

We were informed last fall that a performance audit will be conducted sometime in the next year by legislative auditors. The scope of the audit has not been set. Some items being considered are eligibility, conflicts, process for appointing contract attorneys, the shift of the appellate office, and cost recovery.

A strong undercurrent in the debate is the size of agency’s budget. How can the cost be more than \$20,000,000 today when public defense cost less than half that five years ago? Ideas for reducing the cost abound: the belief the agency would cost less if managed better is palpable; there can be fewer regions; too many spurious motions would end if more defendants paid for their defense; cases are unnecessarily being tried; managers without caseloads would curb these abuses; too many frivolous appeals are filed (even though former supreme court justices denounce even a hint of the practice); the agency is underutilizing paralegals who could relieve workload stress on the lawyers; more paralegals and fewer lawyers will be cheaper. The legislature’s interim finance committee will examine the agency staffing before the next session. Availability, job classifications, and salary data is already being collected about paralegals. The FTE attorneys and contract lawyers cost analysis is completed as is the salary comparison with FTE counterparts.

Two other matters are of pretty much equal significance. It seemed everyone at the Capitol had a story about someone being represented who was not financially eligible for a public defender. The agency not doing enough at recovering the costs of representation is the companion complaint. SB187 addresses both. The agency now has a new purpose of ensuring “that clients of the statewide public defender system pay reasonable costs for services provided by the system based on the clients’ financial ability to pay.” The PDC will be addressing the purpose soon.

The journey through the session was an eye-opener into beliefs held and the depth they plunge on scant accounts of unverified information. The trip isn’t over. There is work to do. Legislators were told how underpaid the contract attorneys and FTEs are. Better economic times and persistent effort will eventually get better pay for both.

Thank you all for your continuing efforts and dedication at providing effective assistance of counsel for those in need. Hold your heads high for the good you do. Together we will persevere.



OPD SPOTLIGHT

Matt Pavelich, Assistant Public Defender, Glendive

By Cyndi Thornton

Matt was born and raised for the most part on a ranch on the Flathead Indian Reservation. He was in the Marine Corps, received a BA from the University of Montana, and has worked as a bouncer, roughneck, ranch hand, janitor, and a civilian employee of the Navy, just to mention a few non-law jobs. Matt has traveled to the Pacific and Indian Oceans while working for the Navy and to Central America. He has practiced law for the last 20 years as a defense attorney and as a prosecutor in various Montana locations. He worked as a defense attorney for a year in American Samoa.

Among Matt's hobbies are hang gliding (past tense) and playing the flute. He is the survivor of several hang glider wrecks. But his real passion is writing fiction and he writes amazing legal briefs (non-fiction). Matt is a graduate of the Iowa Writer's Workshop and is an author. Matt's honors, citations, and accomplishments include the Hensfield Foundation Award, Teaching/Writing Fellowship at the University of Iowa, Michener Foundation Award, and Book Sense selection. Citations include tickets for speeding in Wyoming, Idaho, and Montana. Matt is the father of two children - Nicholas, age 21; Riley Jane, age 18. Nick and Riley currently attend the University of Montana. When mad, Matt bears a striking resemblance to Vladimir Lenin. *(Continued on Page 8)*



Virginia Custis, Secretary, Missoula

By Dave Stenerson

My guess is that most of you weren't aware that May 5, in addition to being Cinco de Mayo is also the day that in 1809 Mary Kies became the first woman issued a patent for her technique of weaving straw with silk and thread, or that it's also National Day of Prayer, Cartoonists' Day, International Midwives' Day, Martin Z. Mollusk Day and Totally Chipotle Day. Well, pardon your ignorance! Those of us lucky enough to work in the Missoula office of OPD Region 2 are enlightened daily of such matters by our beloved Virginia Custis.



Virginia, who has been with OPD for going on three years, provides the office with a daily rendition of "Jail Arraignments, On-call Duties, Missing Personnel" and other pertinent information to remind us all who is doing what and who is out for the day. The additional tidbits she provides offer a humorous addition to an otherwise very boring and mundane daily report and starts us all off with a smile.

While Virginia's sense of humor is infectious, she has a no-nonsense dedication to the operation of our office in Missoula. It may come from her military training, both in the Army and Navy (she preferred her time with the Army), but she is serious about her "front line" position as initial contact person of those who call or wander into the office for various and sundry reasons. As you all know, not everyone is happy and cheerful

when they contact our OPD offices and when a client, family member of a client, curiosity seeker or passer-by approaches our "receptionist" with less respect than one would give a rented mule, they soon learn that a little respect goes a long way with our cat-loving sergeant at arms.

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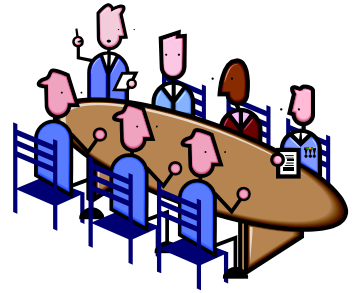
Committee Debates, Discusses Change

By Harry Freebourn

Recently a Change Management Committee was formed to review potential changes to major policy, procedure, and software and system upgrades. The committee debates the advantages and disadvantages of proposed changes, exploring the impact on each part of the organization. The committee's membership is comprised of a broad spectrum of the agency's workforce so all disciplines can weigh in. Members may vote suggested changes "up or down" or decide they need more information before making a final decision. This process ensures that we are prepared to support change and most importantly, communicate changes and their consequences for our workforce to those who are affected by it.

I want to assure you that before any major change is made to your work or to our systems it is carefully considered and debated by management and your peers. The current members of the committee are Randi Hood, Harry Freebourn, Eric Olson, Kyle Belcher, Marsha Parr, Carleen Green, Barb Kain, Mori Woods, Cassidy Blomgren, Sarah Wardinsky, Joslyn Hunt, and Larry Murphy.

If you have questions, please contact any member.



Chris Daly Wins MTACDL's 2010 Lawyer of the Year

Reprinted courtesy of MTACDL and Wendy Holton

This year's Lawyer of the Year – Chris Daly – was selected for his great work at Missoula's Office of the Public Defender.

We are all aware that Public Defenders handle some of the most difficult cases and clients, and that they have limited resources and little or no control over their caseloads. This is wrong, but there is scarce chance of improvement in this political and budgetary climate.

Chris exemplifies what is best about the Public Defender system. Despite the hardships, he is dedicated to each of his clients. He tried 11 felony jury trials last year and several more in the lower courts.

He successfully argued that a client driving the wrong way on the interstate was not guilty of felony criminal endangerment. He was also able to convince a jury that a police officer, the complaining witness in a case where the charge was Assault on a Police Officer, exaggerated his injuries. The client was acquitted.

Chris is a model public defender – not afraid to assert his client's right to a jury trial, eager to mentor less experienced attorneys and willingly available to assist as a lead attorney in helping to assign and staff felony cases within the office.

MTACDL salutes Chris for his dedication and hard work.



Chris Daly, MTACDL's Lawyer of the Year

Capital Defense Training will Commence in August

In order to enhance its ability to provide effective representation to indigent defendants in state capital cases, OPD will present training in the defense of death penalty cases.

The training, identified as the Northern Rockies Death Penalty Institute, will be presented in three phases. Session 1, *Fundamentals of Capital Defense*, will be approved for 25 CLE credits. It will be presented August 15-19, 2011 at the University of Montana Law School and will focus on the process and procedures of death penalty defense litigation from appointment to sentencing, specifically including issues pertaining to jury dynamics, mitigation, cultural communication, mental health, substance abuse, and the unique challenges capital defenders face in communicating with their clients. The ten person faculty includes experienced death penalty instructors from the Darrow Death Penalty College, the Texas Capital Defender program and the National Association of Criminal Defense Lawyers, as well as nationally recognized mitigation and mental health providers.

Interested attorneys can submit an application on OPD's website. Applicants will be required to demonstrate a commitment to representing indigent capital defendants. State public defenders and private attorneys currently engaged in providing contract services to indigent defendants will receive first priority. State indigent capital defenders from Wyoming and Idaho will also be participating in the program.

Enrollment is limited. Applications must be received by June 15, 2011.

Sessions 2, *Ethics*, and 3, *Advanced Capital Defense Litigation*, will be offered in 2012.

"Session 1, Fundamentals of Capital Defense, will be approved for 25 CLE credits. It will be presented August 15-19, 2011 at the University of Montana Law School."

Capital Defense Team

By Randi Hood

As many of you know, OPD represents a man in Flathead County who is charged with two homicides for which the state is seeking the death penalty. The notice of intent to seek the death penalty was filed in March, and an internal team was established to handle the defense, coordinated by Eric Olson. The original team consisted of Noel Larrivee, chief trial counsel; Nichole Ducheneaux, second trial chair; Ed Sheehy, attorney for mitigation; Doug Ziglar, investigator; Katrina Sherman, paralegal; and Eli Parker, briefing attorney.

The cost of defending a death penalty case is large, and could not be absorbed into our already strapped budget. We asked the legislature for supplemental funding to cover the cost for the defense, and received \$150,000 to get us to June 30, 2010. We also received \$900,000 in our next biennial budget that is restricted to death penalty defense.

Since receiving the supplemental funding, we are now staffing the death penalty team with temporary hires as much as possible so as not to drain resources from various offices. While the trial and mitigation attorneys remain the same, we are hiring or contracting for the paralegal and briefing functions. Tom Adamo has left his investigator position in Region 2 and taken the investigator position on this team. Doug Ziglar will continue on the case in a limited capacity.

My thanks go out to each of these individuals who have been willing to take on this daunting task. Until our funding came through they each juggled current responsibilities while getting very good work done on this case. Some short-term juggling continues. Despite that, they are all doing a great job!





2011 AFSCME Biennial Convention Set

By Robin Haux

The Executive Board of AFSCME, Montana Council 9 has set the dates of June 23 through June 26, 2011 to hold the Council's 53rd Convention at the Holiday Inn, located in Helena, Montana. On Thursday June 23, there will be a reception beginning at 5:00 p.m. at the Holiday Inn for AFSCME members, guests, and other Convention attendees.

The 2011 Montana AFSCME Biennial Convention will convene at 10:00 a.m. on Friday, June 24, and registration will be held Friday, June 24 from 7:30 a.m.-10:00 a.m. in the lobby of the Holiday Inn.

**Convention Highlights:*

- ♦ Lee Saunders, newly elected AFSCME International Secretary/Treasurer will be attending and speaking on Saturday, June 25.
- ♦ Attorney General Steve Bullock will be addressing all delegates on Saturday, June 25.
- ♦ BBQ and Helena Brewers baseball game on Friday, June 24.
- ♦ Motivational Speaker/Comedian Damian Mason to perform Friday afternoon, June 24.

Montana Council 9 UPDATES:

- ⇒ Check out our *NEW* and *IMPROVED* Montana Council 9 website! Visit www.mtafscme.com for regular Council 9 updates, current events, and more!
- ⇒ Search 'Montana AFSCME' on Facebook and see the Council's new page! You can find a direct link to the Facebook page from our website at www.mtafscme.com

"You could get 40 hours off, \$500 cash or more depending on your suggestion/idea and how much you save OPD."

Time to Put on the Thinking Caps

Are you aware that the Office of the State Public Defender Office has an Employee Incentive Program (EIP)? This program recognizes and rewards individuals and teams of state employees and non-employees for innovations that significantly contribute to the efficiency, economy, or other improvement of state government. The award can be in the form of money, paid leave or other non-monetary recognition.

Legislation enacted in 1993 defines the current Employee Incentive Program. Each agency administers its own program. If you believe that you have an idea innovation, suggestion, or prototype which would result in cost savings for the OPD, we would encourage you to review our policy. Complete the EIP Form attached to the policy and submit it to the Human Resource Office at 44 W. Park, Butte, MT 59701.

To learn more about our Incentive Award Program and obtain the required application form, click on this link <http://www.publicdefender.mt.gov/forms/pdf/180-IncentiveAwards.pdf>.

If you should have any questions contact Barb Kain, Human Resource Officer, 406-444-9545, 406-496-6091 or via E-mail bkain@mt.gov.

Records Management Grant Project Draws to a Close



From left, Records Management students Jacquie Welch, Stevey Still, and Mallory Stroup

Our Montana Board of Crime Control subgrant for records management has finally reached the end of the line. We received several extensions to allow us to expend all of the funds that were awarded to help us process the mountains of paper that the previous public defender systems blessed us with. Many thanks to our core group of student workers in Butte and Missoula, Jacquie Welch, Stevey Still, Mallory Stroup, and Cara Mooney, as well as the other students and OPD staff who have worked so long and hard on this project.

Although the grant funding has been expended, records management will continue to be a priority. Support staff can look forward to learning more about records management at the June training, where one of the featured speakers will be Patti Borsberry, Records and Information Management Division Deputy from the Secretary of State's office. In the meantime, feel free to contact Cathy Doyle with your records management questions or concerns.



PAGE 8

Matt Pavelich (Cont.)

Matt has a new novel due out in the winter of 2012 entitled "The Other Shoe" described by Matt as follows: "The Other Shoe is a story of good people doing bad things, an ensemble cast of Raskinikovs being dragged or drawn toward hard reckoning in a remote corner of Montana. The book describes justice as a mad-deningly moving target, but an aspiration, regardless of how unlikely it is to be attained, that is essential to our individual and collective humanity."

Matt's previous books include "Beasts of the Forest, Beasts of the Field," Owl Creek Press (Seattle) 1989 collected short fiction; and "Our Savage," Shoemaker & Hoard 2004, a novel.

I have joked that the best publicity for Matt's new book would be to get it "banned." He has responded, "If only..."

Matt Pavelich came to work at Region 10, Glendive in May, 2010 as a staff attorney. Matt has been a great asset to the Glendive Office even though his heart remains in Western Montana; he often comments about the lack of things to do in Glendive in comparison to Missoula. Matt has carried a heavy caseload for the Public Defender's Office in Region 10 and has helped us through a tough year.

I hope that Matt stays with the Public Defenders for a good while longer.

Virginia Custis (Cont.)

As the official greeter in Missoula, she knows this ain't WalMart, folks. Receptionist is a woefully inadequate job title for our Virginia. Her job description does not include, as a small example, the tough decisions she regularly makes about where to send an unruly "customer" for help we may not be able to provide, how to quell the angst of a complaining client, or politely, but firmly, explaining that our attorneys aren't always immediately available for consultation about how the court expects fine payments when the court has taken away the ability to drive.

So if you see Virginia walking the downtown streets of Missoula at a First Friday, or catch her at a Folk/Bluegrass festival around the state, give her a smile and a thank you – she'll return the gesture ten-fold. And remember – May 6 is International No-diet Day, No Homework Day and No Pants Day.

There will be a test.

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ENSURING EQUAL ACCESS
TO JUSTICE STATEWIDE

The Office of the State Public Defender is responsible for statewide Public Defender Services, provided statewide through Regional Offices.

The mission of the Office of the State Public Defender is to ensure equal access to justice for the State's indigent and those who are statutorily entitled to services in civil cases, as well as to provide appellate representation to indigent clients.

Randi M. Hood is the Chief Public Defender, and Joslyn Hunt is the Chief Appellate Defender. They are appointed by the Montana Public Defender Commission, currently chaired by Fritz Gillespie. For more information, please visit our website, www.publicdefender.mt.gov.

We're on the web!

www.publicdefender.mt.gov



Upcoming Training Events

Friday Satellite Presentations (3:15-4:45)

June 24: *2011 Legislative Update*

July 22: *Immigration Consequences, Part 2*

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Lunch Hour Civil Practice Update Conferences

These discussions will be conducted by telephone conference call and will include guest speakers. Intended for practitioners within the focus area. **June 17:** DN

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June 28-29: *Support Staff Conference (Great Falls)*

Agenda coming soon!